

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

**SUBJECT: UPDATE ON AB 900 AND
PROPOSED GOOGLE MIXED-USE
DEVELOPMENT**

DATE: September 11, 2020

Approved



Date

9/11/20

INFORMATION

This memorandum provides information about the failure of the State Legislature to pass Senate Bill (SB) 995, and implications for the Google Mixed-Use Development – an approved participant in the State Assembly Bill (AB) 900 program that expires January 1, 2021.

Background on State AB 900 Program

As described in the Information Memo, *Update on Planning and Community Engagement Process for Diridon Station Area and Proposed Google Mixed-Use Development*, dated August 19, 2019¹, the California Governor signed AB 900 in 2011 (codified in California Public Resources Code Sections 21178-21189.3) to encourage large development projects that create jobs and meet a high standard of public benefits by streamlining the judicial review process under the California Environmental Quality Act (CEQA).

AB 900 facilitates timely delivery of project benefits to the community by streamlining CEQA and project approval litigations. Under AB 900, any legal challenges get filed in the Court of Appeal, and the Court issues its decision *within nine months to the extent feasible*.

For development projects to qualify for AB 900, they must be large, privately financed projects that create significant numbers of construction jobs and permanent jobs, pay prevailing wages, and meet high-threshold State environmental requirements (e.g., innovative measures to significantly reduce traffic, air quality, and other important environmental impacts, and full mitigation of greenhouse gas emissions).

¹ Memorandum: <https://myemail.constantcontact.com/Update-on-Planning-and-Community-Engagement-Process-for-Diridon-Station-Area-and-Proposed-Google-Mixed-Use-Development.html?soid=1126946575015&aid=DCCa2okFWoQ>

The AB 900 program does not affect requirements for the environmental impact analysis or reduce requirements for public engagement under CEQA; in fact, the program comes with enhanced transparency requirements for timely posting of all documents and materials related to the project Environmental Impact Report (EIR) on a public website once the draft EIR is circulated for public review.

The Governor certified the San Jose Downtown West Mixed-Use Plan as an AB 900 project on December 30, 2019.

Streamlining under AB 900 would aid timely implementation of the mixed-use development following Council approval. “Timely implementation” was identified as a shared goal in the City’s Memorandum of Understanding (MOU) with Google in order to maximize integration with planned transit projects and achieve the benefits of implementing the Diridon Station Area Plan.

In San José, the benefits of timely development of the Downtown West project include:

- 4,000-5,000 residential units, with an affordability goal of 25%,
- 7.3 million square feet of office space,
- 500,000 square feet of retail, cultural arts, education, hotel, and other active uses,
- Significantly increased ridership for BART, Caltrain, VTA light rail, high-speed rail, and buses,
- 15 acres of parks, plazas, and green spaces,
- Tens of thousands of permanent jobs across a range of skill and income levels,
- Community benefit funds for affordable housing, anti-displacement, educational opportunity, job training, and other Council- and community-identified priorities,
- Deep environmental sustainability: LEED Gold for all 7.3 million square feet of office space, highly efficient shared utility systems, and net zero greenhouse gas emissions, and
- Up to 5,700 construction jobs with prevailing wage

In addition, prolonged uncertainty (2, 5, 10 years) regarding the start of Google-related construction would significantly complicate coordinated planning for BART, rail, and station construction, and the integration needed between the new transportation infrastructure and Google’s mixed-use development for a good customer experience.

AB 900 Deadline and SB 995

The challenge is that to benefit from streamlining under AB 900, the City Council must consider and take action on the Google mixed-use development project application, including the EIR and entitlements, by January 1, 2021 — the date the program expires.

Before the COVID-19 pandemic, this timeline was consistent with the anticipated timeline for the City's review and community engagement process. The original target for Council consideration of the Downtown West project proposal (including a Development Agreement) and amendments to the Diridon Station Area Plan was November 2020.

Due to the need for City staff to perform emergency response services and the need for all organizations involved with the project to transition to remote work and the shelter-in-place restrictions, the original project timeline was revised in April 2020 to anticipate bringing the staff recommendation to Council in Spring of 2021. The City did not anticipate meeting the December 31, 2020 deadline for AB 900 because the pandemic would delay production of the EIR and other project documents, slow the project review process, and make meaningful public involvement more challenging.

The City then lent support to SB 995 (Atkins), which a) extended the AB 900 program for projects already approved under AB 900 but delayed due to COVID-19, and b) expanded the program to include more projects, because the program is a proven economic recovery tool to accelerate investment.

SB 995 enjoyed widespread support; versions of the bill passed the California Senate in late June and passed the Assembly Natural Resource Committee and the Assembly Appropriations Committee in August. However, it passed the Assembly in the final minutes of the session on August 31, 2020 with a 62-4 vote but without adequate time to get the bill back to the Senate for a concurrence vote.

The Administration and Mayor's Office is working with the President Pro Tempore Atkins, the City's state legislative advocates, and other affected cities (including San Diego and Los Angeles) to encourage consideration of AB 995 in a Special Legislative Session that could be held this fall or as an urgency bill considered when the Legislature convenes in January 2021, applied retroactively.

Google and the Administration considered, but rejected, trying to accelerate the project schedule to meet the January 1, 2021 AB 900 deadline. Although the required project documents and statutorily required hearings conceivably could be completed this calendar year, there would not be sufficient time for the community to participate meaningfully in the review process. Continuous striving for meaningful participation, community trust, and long-term relationships are core values for the City and Google that should not be put at risk to meet the State deadline.

By not driving to meet the January 1, 2021 deadline, there is risk that the Google project may end up not covered by AB 900. Any EIR-related lawsuits could take years to resolve, risking lost momentum for implementing the mixed-use project, complications with transit planning coordination, and delay in realizing the benefits to the community and our economic recovery.

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Community Engagement

This fall, the City will host a series of virtual events and online tools to share information and gather feedback on the Downtown West project and Diridon Station Area Plan (DSAP) amendment process. These include but are not limited to: a regular meeting of the Station Area Advisory Group (SAAG) on September 16, 2020, a Community Meeting on the Downtown West project tentatively scheduled for October 15, 2020, and a comprehensive City Council Study Session on November 16, 2020. In addition, the City is partnering with seven community-based organizations to host additional events and expand our outreach capacity. Please visit www.diridonsj.org for more information.

/s/

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For questions, please contact Kim Walesh, Deputy City Manager, at (408) 535-8177.